

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

TOUGHER INDUSTRIES ENTERPRISES, *
LLC, *

Plaintiff, *

v. *

N.B. KENNEY CO., INC.; ARCH
INSURANCE COMPANY; CTA
CONSTRUCTION CO., INC.; HMFH
ARCHITECTS, INC.; and GARCIA
GALUSKA & DESOUSA, INC., *

Civil Action No. 13-cv-12567-IT

Defendants, *

v. *

BERLIN-BOYLSTON REGIONAL
SCHOOL DISTRICT and FIDELITY
AND DEPOSIT COMPANY OF
MARYLAND, *

Third-Party Defendants. *

ORDER

August 31, 2015

TALWANI, D.J.

Defendants CTA Construction Co., Inc. (“CTA”) and Arch Insurance Company (“Arch”) filed an Emergency Motion to Stay Action on Motions Filed on August 20, 2015 and Motion to Dismiss [#117] on August 27, 2015. At the August 13, 2015 Status Conference, the court permitted CTA to file a motion to dismiss for lack of subject matter jurisdiction, and Defendant N.B. Kenney Co., Inc. (“N.B. Kenney”) to file a motion to enforce a settlement agreement, by August 20, 2015. The court entered on an Order [#111] on August 14, 2015 confirming these dates, and both parties filed their respective motions on August 20, 2015. Though CTA and

Arch's August 27 motion to stay and dismiss was filed after the date set forth in the court's August 14, 2015 Order, subject matter jurisdiction may not be waived. Accordingly, the court accepts late filing of the motion, and orders as follows:

- 1) The court DENIES the motion to stay.
- 2) CTA shall file any response to N.B. Kenney's Motion to Enforce Settlement Agreement [#116] in accordance with the court's August 14, 2015 Order.
- 3) CTA shall promptly notify the court and the parties whether it seeks to withdraw its August 20, 2015 Motion to Dismiss [#113] and/or its August 20, 2015 Motion for Order of Dismissal [#115], in light of the August 27, 2015 motion to stay and dismiss. If the August 20, 2015 motions are not withdrawn, N.B. Kenney shall file any response(s) in accordance with the court's August 14, 2015 Order.
- 4) The court will not treat the August 27, 2015 motion to stay and dismiss on an emergency basis. In accordance with Local Rule 7.1(b)(2), N.B. Kenney shall file any response to the August 27, 2015 motion to stay and dismiss no later than September 10, 2015.
- 5) The court sets a hearing on all pending motions for October 21, 2015 at 3:00 p.m. Counsel for any party who now contends that the court lacked original subject matter jurisdiction, should be prepared to address whether prior representations to the court to the contrary, violated Rule 11(b).

IT IS SO ORDERED.

Date: August 31, 2015

/s/ Indira Talwani
United States District Judge